

# Exhibit 72

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*

Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci  
In Support of Plaintiff's Motion for Partial Summary Judgment and  
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment



experience *does* matter

**CASE: Commonwealth of Massachusetts v. Mylan Laboratories Inc., et al.**  
**DATE: July 24, 2007**

Enclosed is the Original of the transcript of the testimony of **Waterer, Judith - 30(b)(6)** along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

Henderson Legal Services  
Phone: 202-220-4158  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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THE COMMONWEALTH OF MASSACHUSETTS,	)	CIVIL ACTION NO.
Plaintiff,	)	03-CV-11865-PBS
	)	
vs.	)	CONTINUED
	)	VIDEOTAPED
MYLAN LABORATORIES, INC.; BARR	)	DEPOSITION OF
LABORATORIES, INC.; DURAMED	)	JUDITH WATERER
PHARMACEUTICALS, INC.; IVAX	)	30(b)(6)
CORPORATION; WARRICK	)	
PHARMACEUTICALS CORPORATION;	)	New York,
WATSON PHARMACEUTICALS, INC.;	)	New York
SCHEIN PHARMACEUTICAL, INC.; TEVA	)	July 24, 2007
PHARMACEUTICALS USA, INC.; PAR	)	
PHARMACEUTICAL, INC.; DEY, INC.;	)	
ETHEX CORPORATION; PUREPAC	)	
PHARMACEUTICAL CO.; and ROXANE	)	Reported By:
LABORATORIES, INC.,	)	CATHI IRISH,
Defendants.	)	RPR, CLVS

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1 MR. HEIDLAGE: Has Roxane ever produced  
2 the information that it submitted to First  
3 DataBank as its WACs and AWP?

4 MS. WITT: We can talk about this over  
5 some break. We have produced to you all of the  
6 documentation that exists. If that includes  
7 every piece of paper that was ever sent to First  
8 DataBank, no one will ever be able to tell you  
9 that for sure.

10 BY MR. HEIDLAGE:

11 Q. When -- direct your attention to  
12 Exhibit Waterer 082. When Roxane reduced its WAC  
13 price, did it also reduce its AWP?

14 A. No.

15 Q. Why not?

16 A. There was no reason to.

17 Q. And why is that?

18 A. We weren't at a competitive  
19 disadvantage based on AWP. There was no reason  
20 to. The reason that we changed the WAC was  
21 because of competitive circumstances.

22 Q. Now, is the -- can you just explain for

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1 Now, in -- with regard to this change  
2 that occurred, what was the reason for increasing  
3 the AWP?

4 A. As a sole source generic, at that time,  
5 it was common for us when you're a sole source  
6 generic to tie your AWP to the brand's AWP. As a  
7 sole source generic, if the brand increased the  
8 price, we chose to go in tandem and increase ours  
9 as well. So we were following the lead of the  
10 brand.

11 Q. Now, in your -- you just testified that  
12 at that time, the practice was to tie -- as a  
13 sole source generic, was to tie the AWP of your  
14 product to the AWP of the brand. How are they  
15 related?

16 A. First of all, let me go back and say  
17 the practice was this -- we did not have a whole  
18 portfolio of sole source generics, so I probably  
19 was imprecise when I said the practice. I'll say  
20 what we chose to do in this circumstances was  
21 treat it as a brand.

22 And I lost your question in trying to

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1 clarify that piece. I apologize.

2 Q. I think we're going to have to come  
3 back to it because you just piqued my interest.  
4 You said we -- we chose to, quote, "treat it as a  
5 brand."

6 Can you just explain for the record  
7 what that means?

8 A. Again, I'm having difficulty being  
9 precise in having each word dissected. When you  
10 are a sole source generic, you have an  
11 opportunity when the brand increases the price  
12 because of the competitive dynamics to increase  
13 the price in tandem with the brand and still be  
14 offering a significant discount to the end use  
15 customer. So when you're for a very brief period  
16 of time in that situation, it is not uncommon to  
17 take advantage of that opportunity.

18 Q. Now, you could have increased your  
19 price to the retail pharmacies by increasing your  
20 bid price on contracts with your customers; isn't  
21 that correct?

22 A. In theory, yes.

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1 Q. But if you are increasing the price,  
2 isn't that something you have to do?

3 A. Yes, if you're increasing the bid  
4 prices, yes.

5 Q. I'm just trying to follow through on  
6 your testimony, okay? What you said is that when  
7 a brand increases its price.

8 A. Uh-huh.

9 Q. Are you talking about its reported  
10 prices or are you talking about its actual prices  
11 to its customers?

12 A. At least in the time period of '96 that  
13 we're talking, I believe they were the same  
14 thing. Brands, to my knowledge, did not typically  
15 offer large discounts until very recently.

16 Q. Okay. So in other words, the -- a  
17 brand's AWP was, at that time at least, very  
18 close to what the brand manufacturer was charging  
19 its retail customers; is that correct?

20 MS. WITT: Object to the form.

21 THE WITNESS: Okay, I don't know what  
22 the brand was charging its retail customers. I

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1 would expect that the brand's WAC was what it was  
2 charging the wholesalers.

3 What arrangements the wholesalers had  
4 for markup to their individual pharmacies that  
5 they serviced, I don't know. And what individual  
6 contracts the brand company may or may not have  
7 had with large buying groups or chains, I don't  
8 know.

9 BY MR. HEIDLAGE:

10 Q. Okay. But in any event, the brand  
11 manufacturer was the competitor against whom you  
12 were making your pricing decisions; is that not  
13 correct?

14 A. At that point in time, yes.

15 Q. And at this -- at this point in time,  
16 you learned that the brand had increased its  
17 prices, I believe you testified.

18 A. Yes.

19 Q. What prices are you talking about?

20 A. Their published pricing.

21 Q. And that was both the AWP and the WAC,  
22 correct?



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1 A. Yes.

2 Q. And do you know what the relationship  
3 between the brand AWP and the azathioprine AWP  
4 was at that -- your -- Roxane's -- strike that.

5 Do you know what the relationship was  
6 between the brand drug and the Roxane  
7 azathioprine, for which it was the generic, was  
8 at that time?

9 MS. WITT: I'm sorry, can I hear the  
10 question?

11 MR. HEIDLAGE: I'm going to strike the  
12 question and I'm going to start over again.

13 BY MR. HEIDLAGE:

14 Q. I believe you testified that the --  
15 that Roxane had chosen to have its AWP reported  
16 in tandem to the brand AWP; is that correct?

17 A. Yes.

18 Q. And what was the relationship of the  
19 Roxane AWP to the brand AWP at that time?

20 A. I would have to pull out a calculator  
21 and find out what the brand's AWP was at the time  
22 and determine that. It would most likely be in

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1 Q. In any event, it's a document other  
2 than, at least, Exhibit Waterer 009?

3 A. If it was in a document, yes.

4 Q. Could you just read for me what the  
5 note is that you were referring to?

6 A. I wrote AAI/Geneva 6/99.

7 Q. What is AAI?

8 A. A pharmaceutical company that got the  
9 approval. Geneva was the one, I believe, that  
10 marketed it.

11 Q. So AAI was the owner of the drug,  
12 Geneva was its marketing agent of some kind?

13 MS. WITT: Object to the form, lack of  
14 foundation, beyond the scope of the deposition  
15 notice.

16 MR. HEIDLAGE: Aside from that it's  
17 okay, right?

18 THE WITNESS: To the best of my  
19 recollection, their legal relationship in terms  
20 of ownership, I don't know.

21 BY MR. HEIDLAGE:

22 Q. Do you recall specifically what was it

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1 about Geneva's marketing of its azathioprine that  
2 caused Roxane to raise its AWP?

3 A. Their AWP was higher than ours. Our  
4 customers were complaining that we were  
5 disadvantaged in the pricing and they wanted us  
6 to be the same as the other generics in the  
7 market.

8 Q. Do you recall how your -- strike that.  
9 Do you recall how Roxane's AWP compared  
10 to the other AWP's in the market after the change?

11 A. I believe the only other AWP was the  
12 brand and AAI and it was probably within pennies.

13 Q. Was it -- in other words, it was within  
14 pennies of AAI's AWP?

15 A. Of Geneva's.

16 Q. Or Geneva's AWP?

17 A. I believe that's correct. Again, I'd  
18 have to pull specifics.

19 Q. Isn't it true that what you did in  
20 making the change in the AWP was to bring your  
21 AWP in line or approximately equal to the AWP of  
22 your competitors?

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1 A. Put it in the same general range, yes.

2 Q. And isn't it true that in every  
3 instance in which Roxane changed its AWP, it  
4 changed its AWP in order to put its AWP  
5 approximately equal to that of its competitors?

6 A. No.

7 MS. WITT: Object to the form.

8 BY MR. HEIDLAGE:

9 Q. Any other -- excuse me. Are you aware  
10 of any instance in which its -- that Roxane did  
11 not change its AWP's in that manner?

12 A. We spoke about it earlier with regard  
13 to azathioprine. The first price change was done  
14 as a price increase relative to what the brand  
15 did, not its generic competitors. In some  
16 instances, Roxane has a few products where we are  
17 the sole source, and in those instances, we  
18 raised pricing without any comparator.

19 Q. In -- directing your attention to  
20 Exhibit Waterer 081 again, and in each of the  
21 instances in which an increase in the AWP shows  
22 as a reason, quote, "competitive circumstances",